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HOUSE BILL 584

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; ELIMINATING THE WAITING PERIOD FOR BENEFIT PAYMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 51-1-5 NMSA 1978 (being Laws 2003, Chapter 47, Section 9, as amended) is amended to read:

"51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

A. An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

(1) has made a claim for benefits with respect to such week in accordance with such rules as the secretary may prescribe;

(2) has registered for work at, and thereafter continued to report at, an employment office in accordance with

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1 such rules as the secretary may prescribe, except that the  
2 secretary may, by rule, waive or alter either or both of the  
3 requirements of this paragraph as to individuals attached to  
4 regular jobs and as to such other types of cases or situations  
5 with respect to which the secretary finds that compliance with  
6 such requirements would be oppressive or would be inconsistent  
7 with the purposes of the Unemployment Compensation Law. No  
8 such rule shall conflict with Subsection A of Section 51-1-4  
9 NMSA 1978;

10 (3) is able to work and is available for work  
11 and is actively seeking permanent full-time work or part-time  
12 work in accordance with Subsection I of Section 51-1-42 NMSA  
13 1978 and in accordance with the terms, conditions and hours  
14 common in the occupation or business in which the individual is  
15 seeking work, except that the secretary may, by rule, waive  
16 this requirement for individuals who are on temporary layoff  
17 status from their regular employment with an assurance from  
18 their employers that the layoff shall not exceed four weeks or  
19 who have an express offer in writing of substantially full-time  
20 work that will begin within a period not exceeding four weeks;

21 ~~[(4) has been unemployed for a waiting period~~  
22 ~~of one week. A week shall not be counted as a week of~~  
23 ~~unemployment for the purposes of this paragraph:~~

24 ~~(a) unless it occurs within the benefit~~  
25 ~~year that includes the week with respect to which the~~

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1 ~~individual claims payment of benefits;~~

2 ~~(b) if benefits have been paid with~~  
3 ~~respect thereto; and~~

4 ~~(c) unless the individual was eligible~~  
5 ~~for benefits with respect thereto as provided in this section~~  
6 ~~and Section 51-1-7 NMSA 1978, except for the requirements of~~  
7 ~~this subsection and of Subsection D of Section 51-1-7 NMSA~~  
8 ~~1978;~~

9 ~~(5)]~~ (4) has been paid wages in at least two  
10 quarters of the individual's base period;

11 [~~(6)]~~ (5) has reported to an office of the  
12 division in accordance with the rules of the secretary for the  
13 purpose of an examination and review of the individual's  
14 availability for and search for work, for employment  
15 counseling, referral and placement and for participation in a  
16 job finding or employability training and development program.  
17 An individual shall not be denied benefits under this section  
18 for any week that the individual is participating in a job  
19 finding or employability training and development program; and

20 [~~(7)]~~ (6) participates in reemployment  
21 services, such as job search assistance services, if the  
22 division determines that the individual is likely to exhaust  
23 regular benefits and [~~need~~] needs reemployment services  
24 pursuant to a profiling system established by the division,  
25 unless the division determines that:

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1 (a) the individual has completed such  
2 services; or

3 (b) there is justifiable cause for the  
4 individual's failure to participate in the services.

5 B. A benefit year as provided in Section 51-1-4  
6 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be  
7 established; provided an individual may not receive benefits in  
8 a benefit year unless, subsequent to the beginning of the  
9 immediately preceding benefit year during which the individual  
10 received benefits, the individual performed service in  
11 "employment", as defined in Subsection F of Section 51-1-42  
12 NMSA 1978, and earned remuneration for such service in an  
13 amount equal to at least five times the individual's weekly  
14 benefit amount.

15 C. Benefits based on service in employment defined  
16 in Paragraph (8) of Subsection F of Section 51-1-42 and Section  
17 51-1-43 NMSA 1978 are to be paid in the same amount, on the  
18 same terms and subject to the same conditions as compensation  
19 payable on the basis of other services subject to the  
20 Unemployment Compensation Law; except that:

21 (1) benefits based on services performed in an  
22 instructional, research or principal administrative capacity  
23 for an educational institution shall not be paid for any week  
24 of unemployment commencing during the period between two  
25 successive academic years or terms or, when an agreement

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1 provides for a similar period between two regular but not  
2 successive terms, during such period or during a period of paid  
3 sabbatical leave provided for in the individual's contract, to  
4 any individual if the individual performs such services in the  
5 first of such academic years or terms and if there is a  
6 contract or a reasonable assurance that the individual will  
7 perform services in any such capacity for any educational  
8 institution in the second of such academic years or terms;

9 (2) benefits based on services performed for  
10 an educational institution other than in an instructional,  
11 research or principal administrative capacity shall not be paid  
12 for any week of unemployment commencing during a period between  
13 two successive academic years or terms if the services are  
14 performed in the first of such academic years or terms and  
15 there is a reasonable assurance that the individual will  
16 perform services for any educational institution in the second  
17 of such academic years or terms. If compensation is denied to  
18 an individual under this paragraph and the individual was not  
19 offered an opportunity to perform such services for the  
20 educational institution for the second of such academic years  
21 or terms, the individual shall be entitled to a retroactive  
22 payment of benefits for each week for which the individual  
23 filed a claim and certified for benefits in accordance with the  
24 rules of the division and for which benefits were denied solely  
25 by reason of this paragraph;

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1 (3) benefits shall be denied to any individual  
2 for any week that commences during an established and customary  
3 vacation period or holiday recess if the individual performs  
4 any services described in Paragraphs (1) and (2) of this  
5 subsection in the period immediately before such period of  
6 vacation or holiday recess and there is a reasonable assurance  
7 that the individual will perform any such services in the  
8 period immediately following such vacation period or holiday  
9 recess;

10 (4) benefits shall not be payable on the basis  
11 of services specified in Paragraphs (1) and (2) of this  
12 subsection during the periods specified in Paragraphs (1), (2)  
13 and (3) of this subsection to any individual who performed such  
14 services in or to or on behalf of an educational institution  
15 while in the employ of a state or local governmental  
16 educational service agency or other governmental entity or  
17 nonprofit organization; and

18 (5) for the purpose of this subsection, to the  
19 extent permitted by federal law, "reasonable assurance" means a  
20 reasonable expectation of employment in a similar capacity in  
21 the second of such academic years or terms based upon a  
22 consideration of all relevant factors, including the historical  
23 pattern of reemployment in such capacity, a reasonable  
24 anticipation that such employment will be available and a  
25 reasonable notice or understanding that the individual will be

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1 eligible for and offered employment in a similar capacity.

2 D. Paragraphs (1), (2), (3), (4) and (5) of  
3 Subsection C of this section shall apply to services performed  
4 for all educational institutions, public or private, for profit  
5 or nonprofit, which are operated in this state or subject to an  
6 agreement for coverage under the Unemployment Compensation Law  
7 of this state, unless otherwise exempt by law.

8 E. Notwithstanding any other provisions of this  
9 section or Section 51-1-7 NMSA 1978, no otherwise eligible  
10 individual is to be denied benefits for any week because the  
11 individual is in training or attending school on a full-time  
12 basis with the approval of the division nor is the individual  
13 to be denied benefits by reason of application of provisions in  
14 Paragraph (3) of Subsection A of this section or Paragraph (3)  
15 of Subsection A of Section 51-1-7 NMSA 1978 with respect to any  
16 week in which the individual is in training or attending school  
17 on a full-time basis with the approval of the division. The  
18 secretary shall provide, by rule, standards for approved  
19 training and the conditions for approving training for  
20 claimants, including any training approved or authorized for  
21 approval pursuant to Section 236(a)(1) and (2) of the federal  
22 Trade Act of 1974, as amended, or required to be approved as a  
23 condition for certification of the state's Unemployment  
24 Compensation Law by the United States secretary of labor.

25 F. Notwithstanding any other provisions of this

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1 section, benefits shall not be payable on the basis of services  
2 performed by an alien unless such alien is an individual who  
3 was lawfully admitted for permanent residence at the time the  
4 services were performed, was lawfully present for the purposes  
5 of performing the services or was permanently residing in the  
6 United States under color of law at the time the services were  
7 performed, including an alien who was lawfully present in the  
8 United States as a result of the application of the provisions  
9 of Section 212(d)(5) of the federal Immigration and Nationality  
10 Act; provided that:

11 (1) any information required of individuals  
12 applying for benefits to determine their eligibility for  
13 benefits under this subsection shall be uniformly required from  
14 all applicants for benefits; and

15 (2) an individual shall not be denied benefits  
16 because of the individual's alien status except upon a  
17 preponderance of the evidence.

18 G. Notwithstanding any other provision of this  
19 section, benefits shall not be paid to any individual on the  
20 basis of any services substantially all of which consist of  
21 participating in sports or athletic events or training or  
22 preparing to so participate for any week that commences during  
23 the period between two successive sport seasons, or similar  
24 periods, if the individual performed the services in the first  
25 of such seasons, or similar periods, and there is a reasonable

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1 assurance that the individual will perform the services in the  
2 latter of such seasons or similar periods.

3 H. As used in this subsection, "seasonal ski  
4 employee" means an employee who has not worked for a ski area  
5 operator for more than six consecutive months of the previous  
6 twelve months or nine of the previous twelve months. An  
7 employee of a ski area operator who has worked for a ski area  
8 operator for six consecutive months of the previous twelve  
9 months or nine of the previous twelve months shall not be  
10 considered a seasonal ski employee. The following benefit  
11 eligibility conditions apply to a seasonal ski employee:

12 (1) except as provided in Paragraphs (2) and  
13 (3) of this subsection, a seasonal ski employee employed by a  
14 ski area operator on a regular seasonal basis shall be  
15 ineligible for a week of unemployment benefits that commences  
16 during a period between two successive ski seasons unless the  
17 individual establishes to the satisfaction of the secretary  
18 that the individual is available for and is making an active  
19 search for permanent full-time work;

20 (2) a seasonal ski employee who has been  
21 employed by a ski area operator during two successive ski  
22 seasons shall be presumed to be unavailable for permanent new  
23 work during a period after the second successive ski season  
24 that the individual was employed as a seasonal ski employee;  
25 and

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1 (3) the presumption described in Paragraph (2)  
2 of this subsection shall not arise as to any seasonal ski  
3 employee who has been employed by the same ski area operator  
4 during two successive ski seasons and has resided continuously  
5 for at least twelve successive months and continues to reside  
6 in the county in which the ski area facility is located.

7 I. Notwithstanding any other provision of this  
8 section, an otherwise eligible individual shall not be denied  
9 benefits for any week by reason of the application of Paragraph  
10 (3) of Subsection A of this section because the individual is  
11 before any court of the United States or any state pursuant to  
12 a lawfully issued summons to appear for jury duty."

13 Section 2. Section 51-1-8 NMSA 1978 (being Laws 1936  
14 (S.S.), Chapter 1, Section 6, as amended) is amended to read:

15 "51-1-8. CLAIMS FOR BENEFITS.--

16 A. Claims for benefits shall be made in accordance  
17 with such regulations as the secretary may prescribe. Each  
18 employer shall post and maintain printed notices, in places  
19 readily accessible to employees, concerning their rights to  
20 file claims for unemployment benefits upon termination of their  
21 employment. Such notices shall be supplied by the division to  
22 each employer without cost to the employer.

23 B. A representative designated by the secretary as  
24 a claims examiner shall promptly examine the application and  
25 each weekly claim and, on the basis of the facts found, shall

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1 determine whether the claimant is unemployed, the week with  
2 respect to which benefits shall commence, the weekly benefit  
3 amount payable, the maximum duration of benefits, whether the  
4 claimant is eligible for benefits pursuant to Section 51-1-5  
5 NMSA 1978 and whether the claimant shall be disqualified  
6 pursuant to Section 51-1-7 NMSA 1978. With the approval of the  
7 secretary, the claims examiner may refer, without  
8 determination, claims or any specified issues involved therein  
9 that raise complex questions of fact or law to a hearing  
10 officer for the division for a fair hearing and decision in  
11 accordance with the procedure described in Subsection D of this  
12 section. The claims examiner shall promptly notify the  
13 claimant and any other interested party of the determination  
14 and the reasons therefor. Unless the claimant or interested  
15 party, within fifteen calendar days after the date of  
16 notification or mailing of the determination, files an appeal  
17 from the determination, the determination shall be the final  
18 decision of the division; provided that the claims examiner may  
19 reconsider a nonmonetary determination if additional  
20 information not previously available is provided or obtained or  
21 whenever the claims examiner finds an error in the application  
22 of law has occurred, but no redetermination shall be made more  
23 than twenty days from the date of the initial nonmonetary  
24 determination. Notice of a nonmonetary redetermination shall  
25 be given to all interested parties and shall be subject to

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1 appeal in the same manner as the original nonmonetary  
2 determination. If an appeal is pending at the time a  
3 redetermination is issued, the appeal, unless withdrawn, shall  
4 be treated as an appeal from the redetermination.

5 C. In the case of a claim for [~~waiting period~~  
6 ~~credit or~~] benefits, "interested party", for purposes of  
7 determinations and adjudication proceedings and notices  
8 thereof, means:

9 (1) in the event of an issue concerning a  
10 separation from work for reasons other than lack of work, the  
11 claimant's most recent employer or most recent employing unit;

12 (2) in the event of an issue concerning a  
13 separation from work for lack of work, the employer or  
14 employing unit from whom the claimant separated for reasons  
15 other than lack of work if the claimant has not worked and  
16 earned wages in insured work or bona fide employment other than  
17 self-employment in an amount equal to or exceeding five times  
18 the claimant's weekly benefit amount; or

19 (3) in all other cases involving the allowance  
20 or disallowance of a claim, the secretary, the claimant and any  
21 employing unit directly involved in the facts at issue.

22 D. Upon appeal by any party, a hearing officer  
23 designated by the secretary shall afford the parties reasonable  
24 opportunity for a fair hearing to be held de novo, and the  
25 hearing officer shall issue findings of fact and a decision

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1 which affirms, modifies or reverses the determination of the  
2 claims examiner or tax representative on the facts or the law,  
3 based upon the evidence introduced at such hearing, including  
4 the documents and statements in the claim or tax records of the  
5 division. All hearings shall be held in accordance with  
6 regulations of the secretary and decisions issued promptly in  
7 accordance with time lapse standards promulgated by the  
8 secretary of the United States department of labor. The  
9 parties shall be duly notified of the decision, together with  
10 the reasons therefor, which shall be deemed to be the final  
11 decision of the department, unless within fifteen days after  
12 the date of notification or mailing of the decision further  
13 appeal is initiated pursuant to Subsection H of this section.

14 E. Except with the consent of the parties, no  
15 hearing officer or members of the board of review, established  
16 in Subsection F of this section, or secretary shall sit in any  
17 administrative or adjudicatory proceeding in which:

18 (1) either of the parties is related to the  
19 hearing officer, member of the board of review or secretary by  
20 affinity or consanguinity within the degree of first cousin;

21 (2) the hearing officer, member of the board  
22 of review or secretary was counsel for either party in that  
23 action; or

24 (3) the hearing officer, member of the board  
25 of review or secretary has an interest ~~which~~ that would

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1 prejudice the rendering of an impartial decision.

2 The secretary, any member of the board of review or appeal  
3 tribunal hearing officer shall withdraw from any proceeding in  
4 which the hearing officer, member of the board of review or  
5 secretary cannot accord a fair and impartial hearing or when a  
6 reasonable person would seriously doubt whether the hearing  
7 officer, board member or secretary could be fair and impartial.  
8 Any party may request a disqualification of any appeal tribunal  
9 hearing officer or board of review member by filing an  
10 affidavit with the board of review or appeal tribunal promptly  
11 upon discovery of the alleged grounds for disqualification,  
12 stating with particularity the grounds upon which it is claimed  
13 that the person cannot be fair and impartial. The  
14 disqualification shall be mandatory if sufficient factual basis  
15 is set forth in the affidavit of disqualification. If a member  
16 of the board of review is disqualified or withdraws from any  
17 proceeding, the remaining members of the board of review may  
18 appoint an appeal tribunal hearing officer to sit on the board  
19 of review for the proceeding involved.

20 F. There is established within the department, for  
21 the purpose of providing higher level administrative appeal and  
22 review of determinations of a claims examiner or decisions  
23 issued by a hearing officer pursuant to Subsection B or D of  
24 this section, a "board of review" consisting of three members.  
25 Two members shall be appointed by the governor with the consent

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1 of the senate. The members so appointed shall hold office at  
2 the pleasure of the governor for terms of four years. One  
3 member appointed by the governor shall be a person who, on  
4 account of previous vocation, employment or affiliation, can be  
5 classed as a representative of employers, and the other member  
6 appointed by the governor shall be a person who, on account of  
7 previous vocation, employment or affiliation, can be classed as  
8 a representative of employees. The third member shall be an  
9 employee of the department appointed by the secretary who shall  
10 serve as [~~chairman~~] chair of the board. Either member of the  
11 board of review appointed by the governor who has missed two  
12 consecutive meetings of the board may be removed from the board  
13 by the governor. Actions of the board shall be taken by  
14 majority vote. If a vacancy on the board in a position  
15 appointed by the governor occurs between sessions of the  
16 legislature, the position shall be filled by the governor until  
17 the next regular legislative session. The board shall meet at  
18 the call of the secretary. Members of the board appointed by  
19 the governor shall be paid per diem and mileage in accordance  
20 with the Per Diem and Mileage Act for necessary travel to  
21 attend regularly scheduled meetings of the board of review for  
22 the purpose of conducting the board's appellate and review  
23 duties.

24 G. The board of review shall hear and review all  
25 cases appealed in accordance with Subsection H of this section.

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1 The board of review may modify, affirm or reverse the decision  
2 of the hearing officer or remand any matter to the claims  
3 examiner, tax representative or hearing officer for further  
4 proceedings. Each member appointed by the governor shall be  
5 compensated at the rate of fifteen dollars (\$15.00) for each  
6 case reviewed up to a maximum compensation of twelve thousand  
7 dollars (\$12,000) in any one fiscal year.

8 H. Any party aggrieved by a final decision of a  
9 hearing officer may file, in accordance with regulations  
10 prescribed by the secretary, an application for appeal and  
11 review of the decision with the secretary. The secretary shall  
12 review the application and shall, within fifteen days after  
13 receipt of the application, either affirm the decision of the  
14 hearing officer, reverse the decision of the hearing officer,  
15 modify the decision of the hearing officer, remand the matter  
16 to the hearing officer, tax representative or claims examiner  
17 for an additional hearing or refer the decision to the board of  
18 review for further review and decision on the merits of the  
19 appeal. If the secretary affirms, reverses or modifies the  
20 decision of the hearing officer, that decision shall be the  
21 final administrative decision of the department and any appeal  
22 therefrom shall be taken to the district court in accordance  
23 with the provisions of Subsections M and N of this section. If  
24 the secretary remands a matter to a hearing officer, tax  
25 representative or claims examiner for an additional hearing,

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1 judicial review shall be permitted only after issuance of a  
2 final administrative decision. If the secretary refers the  
3 decision of the hearing officer to the board of review for  
4 further review, the board's decision on the merits of the  
5 appeal shall be the final administrative decision of the  
6 department, which may be appealed to the district court in  
7 accordance with the provisions of Subsections M and N of this  
8 section. If the secretary takes no action within fifteen days  
9 of receipt of the application for appeal and review, the  
10 decision shall be promptly scheduled for review by the board of  
11 review as though it had been referred by the secretary. The  
12 secretary may request the board of review to review a decision  
13 of a hearing officer that the secretary believes to be  
14 inconsistent with the law or with applicable rules of  
15 interpretation or that is not supported by the evidence, and  
16 the board of review shall grant the request if it is filed  
17 within fifteen days of the issuance of the decision of the  
18 hearing officer. The secretary may also direct that any  
19 pending determination or adjudicatory proceeding be removed to  
20 the board of review for a final decision. If the board of  
21 review holds a hearing on any matter, the hearing shall be  
22 conducted by a quorum of the board of review in accordance with  
23 regulations prescribed by the secretary for hearing appeals.  
24 The board of review shall promptly notify the interested  
25 parties of its findings of fact and decision. A decision of

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1 the board of review on any disputed matter reviewed and decided  
2 by it shall be based upon the law and the lawful rules of  
3 interpretation issued by the secretary, and it shall be the  
4 final administrative decision of the department, except in  
5 cases of remand. If the board of review remands a matter to a  
6 hearing officer, claims examiner or tax representative,  
7 judicial review shall be permitted only after issuance of a  
8 final administrative decision.

9 I. Notwithstanding any other provision of this  
10 section granting any party the right to appeal, benefits shall  
11 be paid promptly in accordance with a determination or a  
12 decision of a claims examiner, hearing officer, secretary,  
13 board of review or reviewing court, regardless of the pendency  
14 of the period to file an appeal or petition for judicial review  
15 that is provided with respect thereto in Subsection D or M of  
16 this section or the pendency of any such filing or petition  
17 until such determination or decision has been modified or  
18 reversed by a subsequent decision. The provisions of this  
19 subsection shall apply to all claims for benefits pending on  
20 the date of its enactment.

21 J. If a prior determination or decision allowing  
22 benefits is affirmed by a decision of the department, including  
23 the board of review or a reviewing court, the benefits shall be  
24 paid promptly regardless of any further appeal which may  
25 thereafter be available to the parties, and no injunction,

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1 supersedeas, stay or other writ or process suspending the  
2 payment of benefits shall be issued by the secretary or board  
3 of review or any court, and no action to recover benefits paid  
4 to a claimant shall be taken. If a determination or decision  
5 allowing benefits is finally modified or reversed, the  
6 appropriate contributing employer's account will be relieved of  
7 benefit charges in accordance with Subsection B of Section  
8 51-1-11 NMSA 1978.

9 K. The manner in which disputed claims shall be  
10 presented, the reports thereon required from the claimant and  
11 from employers and the conduct of hearings and appeals shall be  
12 in accordance with rules prescribed by the secretary for  
13 determining the rights of the parties, whether or not the rules  
14 conform to common law or statutory rules of evidence and other  
15 technical rules of procedure. A hearing officer or the board  
16 of review may refer to the secretary for interpretation any  
17 question of controlling legal significance, and the secretary  
18 shall issue a declaratory interpretation, which shall be  
19 binding upon the decision of the hearing officer and the board  
20 of review. A full and complete record shall be kept of all  
21 proceedings in connection with a disputed claim. All testimony  
22 at any hearing upon a disputed claim shall be recorded but need  
23 not be transcribed unless the disputed claim is appealed to the  
24 district court.

25 L. Witnesses subpoenaed pursuant to this section

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1 shall be allowed fees at a rate fixed by the secretary. Such  
2 fees and all administrative expenses of proceedings involving  
3 disputed claims shall be deemed a part of the expense of  
4 administering the Unemployment Compensation Law.

5 M. Any determination or decision of a claims  
6 examiner or hearing officer or by a representative of the tax  
7 section of the department in the absence of an appeal therefrom  
8 as provided by this section shall become final fifteen days  
9 after the date of notification or mailing thereof, and judicial  
10 review thereof shall be permitted only after any party claiming  
11 to be aggrieved thereby has exhausted the remedies as provided  
12 in Subsection H of this section. The division and any employer  
13 or claimant who is affected by the decision shall be joined as  
14 a party in any judicial action involving the decision. All  
15 parties shall be served with an endorsed copy of the petition  
16 within thirty days from the date of filing and an endorsed copy  
17 of the order granting the petition within fifteen days from  
18 entry of the order. Service on the department shall be made on  
19 the secretary or ~~[his]~~ the secretary's designated legal  
20 representative either by mail with accompanying certification  
21 of service or by personal service. The division may be  
22 represented in a judicial action by an attorney employed by the  
23 department or, when requested by the secretary, by the attorney  
24 general or any district attorney.

25 N. The final decision of the secretary or board of

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1 review upon any disputed matter may be reviewed both upon the  
2 law, including the lawful rules of interpretation issued by the  
3 secretary, and the facts by the district court of the county  
4 wherein the person seeking the review resides upon certiorari,  
5 unless it is determined by the district court where the  
6 petition is filed that, as a matter of equity and due process,  
7 venue should be in a different county. For the purpose of the  
8 review, the division shall return on certiorari the reports and  
9 all of the evidence heard by it on the reports and all the  
10 papers and documents in its files affecting the matters and  
11 things involved in such certiorari. The district court shall  
12 render its judgment after hearing, and either the department or  
13 any other party affected may appeal from the judgment to the  
14 court of appeals in accordance with the rules of appellate  
15 procedure. Certiorari shall not be granted unless applied for  
16 within thirty days from the date of the final decision of the  
17 secretary or board of review. Certiorari shall be heard in a  
18 summary manner and shall be given precedence over all other  
19 civil cases except cases arising under the Workers'  
20 Compensation Act. It is not necessary in any proceedings  
21 before the division to enter exceptions to the rulings, and no  
22 bond shall be required in obtaining certiorari from the  
23 district court, but certiorari shall be granted as a matter of  
24 right to the party applying therefor."

25 Section 3. Section 51-1-38 NMSA 1978 (being Laws 1936

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1 (S.S.), Chapter 1, Section 16, as amended) is amended to read:

2 "51-1-38. PENALTIES--LIABILITY FOR BENEFIT  
3 OVERPAYMENT.--

4 A. Whoever makes a false statement or  
5 representation knowing it to be false or knowingly fails to  
6 disclose a material fact, to obtain or increase any benefit or  
7 other payment under the Unemployment Compensation Law either  
8 for himself or for any other person, shall be punished by a  
9 fine of not more than one hundred dollars (\$100) or by  
10 imprisonment for not longer than thirty days or by both such  
11 fine and imprisonment, and each such false statement or  
12 misrepresentation or failure to disclose a material fact shall  
13 constitute a separate offense. In any case where, after notice  
14 and an opportunity to be heard, any person is found by the  
15 secretary to have so obtained or increased the amount of any  
16 benefit for himself, he shall, in addition to other penalties  
17 provided herein, forfeit all benefit rights under the  
18 Unemployment Compensation Law for a period of not more than one  
19 year from and after such determination.

20 B. Any employing unit or any officer or agent of an  
21 employing unit or any other person who makes a false statement  
22 or representation knowing it to be false or who knowingly fails  
23 to disclose a material fact, to prevent or reduce the payment  
24 of benefits to any individual entitled thereto, or to avoid  
25 becoming or remaining subject hereto or to avoid or reduce any

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1 contribution or other payment required from an employing unit  
2 under the Unemployment Compensation Law or who willfully fails  
3 or refuses to make any such contributions or other payment or  
4 to furnish any reports required hereunder or to produce or  
5 permit the inspection or copying of records as required  
6 hereunder, shall be punished by a fine of not more than one  
7 hundred dollars (\$100) or by imprisonment for not longer than  
8 thirty days or by both such fine and imprisonment, and each  
9 such false statement or representation or failure to disclose a  
10 material fact and each day of such failure or refusal shall  
11 constitute a separate offense.

12 C. Any person who shall willfully violate any  
13 provision of the Unemployment Compensation Law or any rule or  
14 regulation thereunder, the violation of which is made unlawful  
15 or the observance of which is required under the terms of the  
16 Unemployment Compensation Law and for which a penalty is  
17 neither prescribed herein nor provided by any other applicable  
18 statute, shall be punished by a fine of not more than one  
19 hundred dollars (\$100) or by imprisonment for not longer than  
20 thirty days or by both such fine and imprisonment, and each day  
21 such violation continues shall be deemed to be a separate  
22 offense.

23 D. Notwithstanding any other provision of the  
24 Unemployment Compensation Law, including the provisions of  
25 Subsection J of Section 51-1-8 NMSA 1978, if any individual

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1 claiming benefits [~~or waiting period credits~~] shall, in  
2 connection with such claim, make any false statement or  
3 representation, in writing or otherwise, knowing it to be false  
4 or shall knowingly fail to disclose any material fact in order  
5 to obtain or increase the amount of a benefit payment, such  
6 claim shall not constitute a valid claim for benefits in any  
7 amount [~~or for waiting period credits~~] but shall be void and of  
8 no effect for all purposes. The entire amount of the benefits  
9 obtained by means of such claim shall be, in addition to any  
10 other penalties provided herein, subject to recoupment by  
11 deduction from the claimant's future benefits or they may be  
12 recovered as provided for the collection of past due  
13 contributions in Subsection B of Section 51-1-36 NMSA 1978.

14 E. Any person who, by reason of the nondisclosure  
15 or misrepresentation by him or by another of a material fact,  
16 irrespective of whether such nondisclosure or misrepresentation  
17 was known or fraudulent, has received any sum as benefits under  
18 the Unemployment Compensation Law, while any conditions for the  
19 receipt of benefits imposed by the Unemployment Compensation  
20 Law were not fulfilled in his case and any person who receives  
21 any sum as benefits while he knows or should know that he is  
22 not entitled to such benefits because he has received a notice  
23 of denial or disqualification or has received a monetary  
24 eligibility notice showing erroneous base period employers and  
25 wages, shall, in the discretion of the secretary and

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1 notwithstanding any action brought pursuant to Subsection A of  
2 this section, either be liable to have such sum deducted from  
3 any future benefits payable to him under the Unemployment  
4 Compensation Law or be liable to repay to the department for  
5 the unemployment compensation fund a sum equal to the amount so  
6 received by him, and such sum shall be collectible in the  
7 manner provided in Subsection B of Section 51-1-36 NMSA 1978  
8 for the collection of past-due contributions.

9 F. Except as provided in Subsection J of Section  
10 51-1-8 NMSA 1978, any person who has received benefits as a  
11 result of a determination or decision of the department or any  
12 court that he was eligible and not disqualified for such  
13 benefits and such determination or decision is subsequently  
14 modified or reversed by a final decision as provided in Section  
15 51-1-8 NMSA 1978, or who has received benefits as a result of  
16 administrative error or for any other reason while conditions  
17 for the receipt of benefits imposed by the Unemployment  
18 Compensation Law were not fulfilled in his case or while he was  
19 disqualified from receiving benefits, irrespective of whether  
20 such overpayment of benefits was due to any fault of the person  
21 claiming benefits, shall, as determined by the secretary or his  
22 authorized delegate, either be liable to have such sum deducted  
23 from any future benefits payable to him under the Unemployment  
24 Compensation Law at a rate to be determined by the secretary  
25 but not less than fifty percent of the weekly benefit amount

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1 payable to him, or be liable to repay to the department, for  
2 the unemployment compensation fund or for credit to the  
3 appropriate reimbursable account, a sum equal to the amount of  
4 benefits received by him for which he was not eligible or for  
5 which he was disqualified or that was otherwise overpaid to  
6 him; provided that for the purposes of this subsection, no  
7 determination or decision establishing an overpayment of  
8 benefits shall be issued by the department against any person  
9 for failure to meet the eligibility conditions of Paragraph (3)  
10 of Subsection A of Section 51-1-5 NMSA 1978 more than one year  
11 after payment of benefits has been made, unless such condition  
12 of eligibility has been appealed or otherwise contested within  
13 such year.

14 G. Any amount of benefits for which a person is  
15 determined to be overpaid pursuant to this section may be  
16 collected in the manner provided in Subsection B of Section  
17 51-1-36 NMSA 1978 for the collection of past-due contributions,  
18 notwithstanding that the person from whom the overpayment is to  
19 be collected has been assessed a penalty pursuant to  
20 Subsections A, B and C of this section.

21 H. An individual shall be liable to repay the  
22 amount of benefits received for any period for which he also  
23 received an award or settlement of back pay resulting from an  
24 action or grievance concerning a discharge unless the amount of  
25 the back pay award or settlement was reduced by the amount of

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1 benefits received during the period. The individual shall  
2 furnish the division with a signed copy of the award or  
3 settlement agreement [~~which~~] that sets forth his name, the name  
4 of the employer, the period of time covered by the award or  
5 settlement, and the amount by which the award or settlement was  
6 so reduced."

7 Section 4. Section 51-1-42 NMSA 1978 (being Laws 2003,  
8 Chapter 47, Section 12, as amended) is amended to read:

9 "51-1-42. DEFINITIONS.--As used in the Unemployment  
10 Compensation Law:

11 A. "base period" means the first four of the last  
12 five completed calendar quarters immediately preceding the  
13 first day of an individual's benefit year, except that "base  
14 period" means for benefit years beginning on or after January  
15 1, 2005 for an individual who does not have sufficient wages in  
16 the base period as defined to qualify for benefits pursuant to  
17 Section 51-1-5 NMSA 1978, the individual's base period shall be  
18 the last four completed calendar quarters immediately preceding  
19 the first day of the individual's benefit year if that period  
20 qualifies the individual for benefits pursuant to Section  
21 51-1-5 NMSA 1978; provided that:

22 (1) wages that fall within the base period of  
23 claims established pursuant to this subsection are not  
24 available for reuse in qualifying for a subsequent benefit  
25 year; and

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1                   (2) in the case of a combined-wage claim  
2 pursuant to the arrangement approved by the federal secretary  
3 of labor, the base period is that base period applicable under  
4 the unemployment compensation law of the paying state;

5                   B. "benefits" means the cash unemployment  
6 compensation payments payable to an eligible individual  
7 pursuant to Section 51-1-4 NMSA 1978 with respect to the  
8 individual's weeks of unemployment;

9                   C. "contributions" means the money payments  
10 required by Section 51-1-9 NMSA 1978 to be made into the fund  
11 by an employer on account of having individuals performing  
12 services for the employer;

13                   D. "employing unit" means any individual or type of  
14 organization, including any partnership, association,  
15 cooperative, trust, estate, joint-stock company, agricultural  
16 enterprise, insurance company or corporation, whether domestic  
17 or foreign, or the receiver, trustee in bankruptcy, trustee or  
18 successor thereof, household, fraternity or club, the legal  
19 representative of a deceased person or any state or local  
20 government entity to the extent required by law to be covered  
21 as an employer, which has in its employ one or more individuals  
22 performing services for it within this state. An individual  
23 performing services for an employing unit that maintains two or  
24 more separate establishments within this state shall be deemed  
25 to be employed by a single employing unit for all the purposes

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1 of the Unemployment Compensation Law. An individual performing  
2 services for a contractor, subcontractor or agent that is  
3 performing work or services for an employing unit, as described  
4 in this subsection, which is within the scope of the employing  
5 unit's usual trade, occupation, profession or business, shall  
6 be deemed to be in the employ of the employing unit for all  
7 purposes of the Unemployment Compensation Law unless the  
8 contractor, subcontractor or agent is itself an employer within  
9 the provisions of Subsection E of this section;

10 E. "employer" includes:

11 (1) an employing unit that:

12 (a) unless otherwise provided in this  
13 section, paid for service in employment as defined in  
14 Subsection F of this section wages of four hundred fifty  
15 dollars (\$450) or more in any calendar quarter in either the  
16 current or preceding calendar year or had in employment, as  
17 defined in Subsection F of this section, for some portion of a  
18 day in each of twenty different calendar weeks during either  
19 the current or the preceding calendar year, and irrespective of  
20 whether the same individual was in employment in each such day,  
21 at least one individual;

22 (b) for the purposes of Subparagraph (a)  
23 of this paragraph, if any week includes both December 31 and  
24 January 1, the days of that week up to January 1 shall be  
25 deemed one calendar week and the days beginning January 1,

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1 another such week; and

2 (c) for purposes of defining an  
3 "employer" under Subparagraph (a) of this paragraph, the wages  
4 or remuneration paid to individuals performing services in  
5 employment in agricultural labor or domestic services as  
6 provided in Paragraphs (6) and (7) of Subsection F of this  
7 section shall not be taken into account; except that any  
8 employing unit determined to be an employer of agricultural  
9 labor under Paragraph (6) of Subsection F of this section shall  
10 be an employer under Subparagraph (a) of this paragraph so long  
11 as the employing unit is paying wages or remuneration for  
12 services other than agricultural services;

13 (2) any individual or type of organization  
14 that acquired the trade or business, or substantially all of  
15 the assets thereof, of an employing unit that at the time of  
16 the acquisition was an employer subject to the Unemployment  
17 Compensation Law; provided that where such an acquisition takes  
18 place, the secretary may postpone activating the separate  
19 account pursuant to Subsection A of Section 51-1-11 NMSA 1978  
20 until such time as the successor employer has employment as  
21 defined in Subsection F of this section;

22 (3) an employing unit that acquired all or  
23 part of the organization, trade, business or assets of another  
24 employing unit and that, if treated as a single unit with the  
25 other employing unit or part thereof, would be an employer

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1 under Paragraph (1) of this subsection;

2 (4) an employing unit not an employer by  
3 reason of any other paragraph of this subsection:

4 (a) for which, within either the current  
5 or preceding calendar year, service is or was performed with  
6 respect to which such employing unit is liable for any federal  
7 tax against which credit may be taken for contributions  
8 required to be paid into a state unemployment fund; or

9 (b) that, as a condition for approval of  
10 the Unemployment Compensation Law for full tax credit against  
11 the tax imposed by the Federal Unemployment Tax Act, is  
12 required, pursuant to that act, to be an "employer" under the  
13 Unemployment Compensation Law;

14 (5) an employing unit that, having become an  
15 employer under Paragraph (1), (2), (3) or (4) of this  
16 subsection, has not, under Section 51-1-18 NMSA 1978, ceased to  
17 be an employer subject to the Unemployment Compensation Law;

18 (6) for the effective period of its election  
19 pursuant to Section 51-1-18 NMSA 1978, any other employing unit  
20 that has elected to become fully subject to the provisions of  
21 the Unemployment Compensation Law;

22 (7) an employing unit for which any services  
23 performed in its employ are deemed to be performed in this  
24 state pursuant to an election under an arrangement entered into  
25 in accordance with Subsection A of Section 51-1-50 NMSA 1978;

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1 and

2 (8) an Indian tribe as defined in 26 USCA  
3 Section 3306(u) for which service in employment is performed;

4 F. "employment":

5 (1) means any service, including service in  
6 interstate commerce, performed for wages or under any contract  
7 of hire, written or oral, express or implied;

8 (2) means an individual's entire service,  
9 performed within or both within and without this state if:

10 (a) the service is primarily localized  
11 in this state with services performed outside the state being  
12 only incidental thereto; or

13 (b) the service is not localized in any  
14 state but some of the service is performed in this state and:  
15 1) the base of operations or, if there is no base of  
16 operations, the place from which such service is directed or  
17 controlled, is in this state; or 2) the base of operations or  
18 place from which such service is directed or controlled is not  
19 in any state in which some part of the service is performed but  
20 the individual's residence is in this state;

21 (3) means services performed within this state  
22 but not covered under Paragraph (2) of this subsection if  
23 contributions or payments in lieu of contributions are not  
24 required and paid with respect to such services under an  
25 unemployment compensation law of any other state, the federal

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1 government or Canada;

2 (4) means services covered by an election  
3 pursuant to Section 51-1-18 NMSA 1978 and services covered by  
4 an election duly approved by the secretary in accordance with  
5 an arrangement pursuant to Paragraph (1) of Subsection A of  
6 Section 51-1-50 NMSA 1978 shall be deemed to be employment  
7 during the effective period of the election;

8 (5) means services performed by an individual  
9 for an employer for wages or other remuneration unless and  
10 until it is established by a preponderance of evidence that:

11 (a) the individual has been and will  
12 continue to be free from control or direction over the  
13 performance of the services both under the individual's  
14 contract of service and in fact;

15 (b) the service is either outside the  
16 usual course of business for which the service is performed or  
17 that such service is performed outside of all the places of  
18 business of the enterprise for which such service is performed;  
19 and

20 (c) the individual is customarily  
21 engaged in an independently established trade, occupation,  
22 profession or business of the same nature as that involved in  
23 the contract of service;

24 (6) means service performed after December 31,  
25 1977 by an individual in agricultural labor as defined in

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1 Subsection Q of this section if:

2 (a) the service is performed for an  
3 employing unit that: 1) paid remuneration in cash of twenty  
4 thousand dollars (\$20,000) or more to individuals in that  
5 employment during any calendar quarter in either the current or  
6 the preceding calendar year; or 2) employed in agricultural  
7 labor ten or more individuals for some portion of a day in each  
8 of twenty different calendar weeks in either the current or  
9 preceding calendar year, whether or not the weeks were  
10 consecutive, and regardless of whether the individuals were  
11 employed at the same time;

12 (b) the service is not performed before  
13 January 1, 1980 by an individual who is an alien admitted to  
14 the United States to perform service in agricultural labor  
15 pursuant to Sections 214(c) and 101(15)(H) of the federal  
16 Immigration and Nationality Act; and

17 (c) for purposes of this paragraph, an  
18 individual who is a member of a crew furnished by a crew leader  
19 to perform service in agricultural labor for a farm operator or  
20 other person shall be treated as an employee of the crew  
21 leader: 1) if the crew leader meets the requirements of a crew  
22 leader as defined in Subsection L of this section; or 2)  
23 substantially all the members of the crew operate or maintain  
24 mechanized agricultural equipment that is provided by the crew  
25 leader; and 3) the individuals performing the services are not,

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1 by written agreement or in fact, within the meaning of  
2 Paragraph (5) of this subsection, performing services in  
3 employment for the farm operator or other person;

4 (7) means service performed after December 31,  
5 1977 by an individual in domestic service in a private home,  
6 local college club or local chapter of a college fraternity or  
7 sorority for a person or organization that paid cash  
8 remuneration of one thousand dollars (\$1,000) in any calendar  
9 quarter in the current or preceding calendar year to  
10 individuals performing such services;

11 (8) means service performed after December 31,  
12 1971 by an individual in the employ of a religious, charitable,  
13 educational or other organization but only if the following  
14 conditions are met:

15 (a) the service is excluded from  
16 "employment" as defined in the Federal Unemployment Tax Act  
17 solely by reason of Section 3306(c)(8) of that act; and

18 (b) the organization meets the  
19 requirements of "employer" as provided in Subparagraph (a) of  
20 Paragraph (1) of Subsection E of this section;

21 (9) means service of an individual who is a  
22 citizen of the United States, performed outside the United  
23 States, except in Canada, after December 31, 1971 in the employ  
24 of an American employer, other than service that is deemed  
25 "employment" under the provisions of Paragraph (2) of this

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1 subsection or the parallel provisions of another state's law,  
2 if:

3 (a) the employer's principal place of  
4 business in the United States is located in this state;

5 (b) the employer has no place of  
6 business in the United States, but: 1) the employer is an  
7 individual who is a resident of this state; 2) the employer is  
8 a corporation organized under the laws of this state; or 3) the  
9 employer is a partnership or a trust and the number of the  
10 partners or trustees who are residents of this state is greater  
11 than the number who are residents of any one other state; or

12 (c) none of the criteria of  
13 Subparagraphs (a) and (b) of this paragraph are met, but the  
14 employer has elected coverage in this state or, the employer  
15 having failed to elect coverage in any state, the individual  
16 has filed a claim for benefits, based on such service, under  
17 the law of this state.

18 "American employer" for the purposes of this paragraph  
19 means a person who is: 1) an individual who is a resident of  
20 the United States; 2) a partnership if two-thirds or more of  
21 the partners are residents of the United States; 3) a trust if  
22 all of the trustees are residents of the United States; or 4) a  
23 corporation organized under the laws of the United States or of  
24 any state. For the purposes of this paragraph, "United States"  
25 includes the United States, the District of Columbia, the

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1 commonwealth of Puerto Rico and the Virgin Islands;

2 (10) means, notwithstanding any other  
3 provisions of this subsection, service with respect to which a  
4 tax is required to be paid under any federal law imposing a tax  
5 against which credit may be taken for contributions required to  
6 be paid into a state unemployment fund or which as a condition  
7 for full tax credit against the tax imposed by the Federal  
8 Unemployment Tax Act is required to be covered under the  
9 Unemployment Compensation Law;

10 (11) means service performed in the employ of  
11 an Indian tribe if:

12 (a) the service is excluded from  
13 "employment" as defined in 26 USCA Section 3306(c) solely by  
14 reason of 26 USCA Section 3306(c)(7); and

15 (b) the service is not otherwise  
16 excluded from employment pursuant to the Unemployment  
17 Compensation Law;

18 (12) does not include:

19 (a) service performed in the employ of:  
20 1) a church or convention or association of churches; or 2) an  
21 organization that is operated primarily for religious purposes  
22 and that is operated, supervised, controlled or principally  
23 supported by a church or convention or association of churches;

24 (b) service performed by a duly  
25 ordained, commissioned or licensed minister of a church in the

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1 exercise of [~~his~~] such ministry or by a member of a religious  
2 order in the exercise of duties required by such order;

3 (c) service performed by an individual  
4 in the employ of [~~his~~] the individual's son, daughter or  
5 spouse, and service performed by a child under the age of  
6 majority in the employ of [~~his~~] the child's father or mother;

7 (d) service performed in the employ of  
8 the United States government or an instrumentality of the  
9 United States immune under the constitution of the United  
10 States from the contributions imposed by the Unemployment  
11 Compensation Law except that to the extent that the congress of  
12 the United States shall permit states to require any  
13 instrumentalities of the United States to make payments into an  
14 unemployment fund under a state unemployment compensation act,  
15 all of the provisions of the Unemployment Compensation Law  
16 shall be applicable to such instrumentalities, and to service  
17 performed for such instrumentalities in the same manner, to the  
18 same extent and on the same terms as to all other employers,  
19 employing units, individuals and services; provided that if  
20 this state shall not be certified for any year by the secretary  
21 of labor of the United States under Section 3304 of the federal  
22 Internal Revenue Code of 1986, 26 U.S.C. Section 3304, the  
23 payments required of such instrumentalities with respect to  
24 such year shall be refunded by the department from the fund in  
25 the same manner and within the same period as is provided in

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1 Subsection D of Section 51-1-36 NMSA 1978 with respect to  
2 contributions erroneously collected;

3 (e) service performed in a facility  
4 conducted for the purpose of carrying out a program of  
5 rehabilitation for individuals whose earning capacity is  
6 impaired by age or physical or mental deficiency or injury or  
7 providing remunerative work for individuals who because of  
8 their impaired physical or mental capacity cannot be readily  
9 absorbed in the competitive labor market, by an individual  
10 receiving that rehabilitation or remunerative work;

11 (f) service with respect to which  
12 unemployment compensation is payable under an unemployment  
13 compensation system established by an act of congress;

14 (g) service performed in the employ of a  
15 foreign government, including service as a consular or other  
16 officer or employee or a nondiplomatic representative;

17 (h) service performed by an individual  
18 for a person as an insurance agent or as an insurance  
19 solicitor, if all such service performed by the individual for  
20 the person is performed for remuneration solely by way of  
21 commission;

22 (i) service performed by an individual  
23 under the age of eighteen in the delivery or distribution of  
24 newspapers or shopping news, not including delivery or  
25 distribution to any point for subsequent delivery or

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1 distribution;

2 (j) service covered by an election duly  
3 approved by the agency charged with the administration of any  
4 other state or federal unemployment compensation law, in  
5 accordance with an arrangement pursuant to Paragraph (l) of  
6 Subsection A of Section 51-1-50 NMSA 1978 during the effective  
7 period of the election;

8 (k) service performed, as part of an  
9 unemployment work-relief or work-training program assisted or  
10 financed in whole or part by any federal agency or an agency of  
11 a state or political subdivision thereof, by an individual  
12 receiving the work relief or work training;

13 (l) service performed by an individual  
14 who is enrolled at a nonprofit or public educational  
15 institution that normally maintains a regular faculty and  
16 curriculum and normally has a regularly organized body of  
17 students in attendance at the place where its educational  
18 activities are carried on as a student in a full-time program,  
19 taken for credit at the institution that combines academic  
20 instruction with work experience, if the service is an integral  
21 part of such program and the institution has so certified to  
22 the employer, except that this subparagraph shall not apply to  
23 service performed in a program established for or on behalf of  
24 an employer or group of employers;

25 (m) service performed in the employ of a

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1 hospital, if the service is performed by a patient of the  
2 hospital, or services performed by an inmate of a custodial or  
3 penal institution for any employer;

4 (n) service performed by real estate  
5 [~~salesmen~~] salespersons for others when the services are  
6 performed for remuneration solely by way of commission;

7 (o) service performed in the employ of a  
8 school, college or university if the service is performed by a  
9 student who is enrolled and is regularly attending classes at  
10 the school, college or university;

11 (p) service performed by an individual  
12 for a fixed or contract fee officiating at a sporting event  
13 that is conducted by or under the auspices of a nonprofit or  
14 governmental entity if that person is not otherwise an employee  
15 of the entity conducting the sporting event;

16 (q) service performed for a private,  
17 for-profit person or entity by an individual as a product  
18 demonstrator or product merchandiser if the service is  
19 performed pursuant to a written contract between that  
20 individual and a person or entity whose principal business is  
21 obtaining the services of product demonstrators and product  
22 merchandisers for third parties, for demonstration and  
23 merchandising purposes and the individual: 1) is compensated  
24 for each job or the compensation is based on factors related to  
25 the work performed; 2) provides the equipment used to perform

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1 the service, unless special equipment is required and provided  
2 by the manufacturer through an agency; 3) is responsible for  
3 completion of a specific job and for any failure to complete  
4 the job; 4) pays all expenses, and the opportunity for profit  
5 or loss rests solely with the individual; and 5) is responsible  
6 for operating costs, fuel, repairs and motor vehicle insurance.  
7 For the purpose of this subparagraph, "product demonstrator"  
8 means an individual who, on a temporary, part-time basis,  
9 demonstrates or gives away samples of a food or other product  
10 as part of an advertising or sales promotion for the product  
11 and who is not otherwise employed directly by the manufacturer,  
12 distributor or retailer, and "product merchandiser" means an  
13 individual who, on a temporary, part-time basis builds or  
14 resets a product display and who is not otherwise directly  
15 employed by the manufacturer, distributor or retailer; or  
16 (r) service performed for a private,  
17 for-profit person or entity by an individual as a landman if  
18 substantially all remuneration paid in cash or otherwise for  
19 the performance of the services is directly related to the  
20 completion by the individual of the specific tasks contracted  
21 for rather than to the number of hours worked by the  
22 individual. For the purposes of this subparagraph, "landman"  
23 means a land professional who has been engaged primarily in:  
24 1) negotiating for the acquisition or divestiture of mineral  
25 rights; 2) negotiating business agreements that provide for the

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1 exploration for or development of minerals; 3) determining  
2 ownership of minerals through the research of public and  
3 private records; and 4) reviewing the status of title, curing  
4 title defects and otherwise reducing title risk associated with  
5 ownership of minerals; managing rights or obligations derived  
6 from ownership of interests and minerals; or utilizing or  
7 pooling of interest in minerals; and

8 (13) for the purposes of this subsection, if  
9 the services performed during one-half or more of any pay  
10 period by an individual for the person employing the individual  
11 constitute employment, all the services of the individual for  
12 the period shall be deemed to be employment but, if the  
13 services performed during more than one-half of any such pay  
14 period by an individual for the person employing the individual  
15 do not constitute employment, then none of the services of the  
16 individual for the period shall be deemed to be employment. As  
17 used in this paragraph, the term "pay period" means a period,  
18 of not more than thirty-one consecutive days, for which a  
19 payment of remuneration is ordinarily made to the individual by  
20 the person employing the individual. This paragraph shall not  
21 be applicable with respect to services performed in a pay  
22 period by an individual for the person employing the individual  
23 where any of such service is excepted by Subparagraph (f) of  
24 Paragraph (12) of this subsection;

25 G. "employment office" means a free public

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1 employment office, or branch thereof, operated by this state or  
2 maintained as a part of a state-controlled system of public  
3 employment offices;

4 H. "fund" means the unemployment compensation fund  
5 established by the Unemployment Compensation Law to which all  
6 contributions and payments in lieu of contributions required  
7 under the Unemployment Compensation Law and from which all  
8 benefits provided under the Unemployment Compensation Law shall  
9 be paid;

10 I. "unemployment" means, with respect to an  
11 individual, any week during which the individual performs no  
12 services and with respect to which no wages are payable to the  
13 individual and during which the individual is not engaged in  
14 self-employment or receives an award of back pay for loss of  
15 employment. The secretary shall prescribe by rule what  
16 constitutes part-time and intermittent employment, partial  
17 employment and the conditions under which individuals engaged  
18 in such employment are eligible for partial unemployment  
19 benefits, but no individual who is otherwise eligible shall be  
20 deemed ineligible for benefits solely for the reason that the  
21 individual seeks, applies for or accepts only part-time work,  
22 instead of full-time work, if the part-time work is for at  
23 least twenty hours per week;

24 J. "state", when used in reference to ~~[any]~~ a state  
25 other than New Mexico, includes, in addition to the states of

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1 the United States, the District of Columbia, the commonwealth  
2 of Puerto Rico and the Virgin Islands;

3 K. "unemployment compensation administration fund"  
4 means the fund established by Subsection A of Section 51-1-34  
5 NMSA 1978 from which administrative expenses under the  
6 Unemployment Compensation Law shall be paid. "Employment  
7 security department fund" means the fund established by  
8 Subsection B of Section 51-1-34 NMSA 1978 from which certain  
9 administrative expenses under the Unemployment Compensation Law  
10 shall be paid;

11 L. "crew leader" means a person who:

12 (1) holds a valid certificate of registration  
13 as a crew leader or farm labor contractor under the federal  
14 Migrant and Seasonal Agricultural Worker Protection Act;

15 (2) furnishes individuals to perform services  
16 in agricultural labor for any other person;

17 (3) pays, either on the crew leader's own  
18 behalf or on behalf of such other person, the individuals so  
19 furnished by the crew leader for service in agricultural labor;  
20 and

21 (4) has not entered into a written agreement  
22 with the other person for whom the crew leader furnishes  
23 individuals in agricultural labor that the individuals will be  
24 the employees of the other person;

25 M. "week" means such period of seven consecutive

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1 days, as the secretary may by rule prescribe. The secretary  
2 may by rule prescribe that a week shall be deemed to be "in",  
3 "within" or "during" the benefit year that includes the greater  
4 part of such week;

5 N. "calendar quarter" means the period of three  
6 consecutive calendar months ending on March 31, June 30,  
7 September 30 or December 31;

8 O. "insured work" means services performed for  
9 employers who are covered under the Unemployment Compensation  
10 Law;

11 P. "benefit year" with respect to an individual  
12 means the one-year period beginning with the first day of the  
13 first week of unemployment with respect to which the individual  
14 first files a claim for benefits in accordance with Subsection  
15 A of Section 51-1-8 NMSA 1978 and thereafter the one-year  
16 period beginning with the first day of the first week of  
17 unemployment with respect to which the individual next files  
18 such a claim for benefits after the termination of the  
19 individual's last preceding benefit year; provided that at the  
20 time of filing such a claim the individual has been paid the  
21 wage required under Paragraph [~~5~~] (4) of Subsection A of  
22 Section 51-1-5 NMSA 1978;

23 Q. "agricultural labor" includes all services  
24 performed:

25 (1) on a farm, in the employ of a person, in

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1 connection with cultivating the soil or in connection with  
2 raising or harvesting an agricultural or horticultural  
3 commodity, including the raising, shearing, feeding, caring  
4 for, training and management of livestock, bees, poultry and  
5 fur-bearing animals and wildlife;

6 (2) in the employ of the owner or tenant or  
7 other operator of a farm, in connection with the operation,  
8 management, conservation or maintenance of the farm and its  
9 tools and equipment, if the major part of the service is  
10 performed on a farm;

11 (3) in connection with the operation or  
12 maintenance of ditches, canals, reservoirs or waterways used  
13 exclusively for supplying and storing water for farming  
14 purposes when such ditches, canals, reservoirs or waterways are  
15 owned and operated by the farmers using the water stored or  
16 carried therein; and

17 (4) in handling, planting, drying, packing,  
18 packaging, processing, freezing, grading, storing or delivery  
19 to storage or to market or to a carrier for transportation to  
20 market any agricultural or horticultural commodity but only if  
21 the service is performed as an incident to ordinary farming  
22 operations. The provisions of this paragraph shall not be  
23 deemed to be applicable with respect to service performed in  
24 connection with commercial canning or commercial freezing or in  
25 connection with any agricultural or horticultural commodity

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1 after its delivery to a terminal market for distribution for  
2 consumption.

3 As used in this subsection, the term "farm" includes  
4 stock, dairy, poultry, fruit, fur-bearing animal and truck  
5 farms, plantations, ranches, nurseries, greenhouses, ranges and  
6 orchards;

7 R. "payments in lieu of contributions" means the  
8 money payments made into the fund by an employer pursuant to  
9 the provisions of Subsection B of Section 51-1-13 NMSA 1978 or  
10 Subsection E of Section 51-1-59 NMSA 1978;

11 S. "department" means the labor department; and

12 T. "wages" means all remuneration for services,  
13 including commissions and bonuses and the cash value of all  
14 remuneration in any medium other than cash. The reasonable  
15 cash value of remuneration in any medium other than cash shall  
16 be established and determined in accordance with rules  
17 prescribed by the secretary; provided that the term "wages"  
18 shall not include:

19 (1) subsequent to December 31, 1977, that part  
20 of the remuneration in excess of the base wage as determined by  
21 the secretary for each calendar year. The base wage upon which  
22 contribution shall be paid during any calendar year shall be  
23 sixty percent of the state's average annual earnings computed  
24 by the division by dividing total wages reported to the  
25 division by contributing employers for the second preceding

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1 calendar year before the calendar year the computed base wage  
2 becomes effective by the average annual employment reported by  
3 contributing employers for the same period rounded to the next  
4 higher multiple of one hundred dollars (\$100); provided that  
5 the base wage so computed for any calendar year shall not be  
6 less than seven thousand dollars (\$7,000). Wages paid by an  
7 employer to an individual in [~~his~~] the employer's employ during  
8 any calendar year in excess of the base wage in effect for that  
9 calendar year shall be reported to the department but shall be  
10 exempt from the payment of contributions unless such wages paid  
11 in excess of the base wage become subject to tax under a  
12 federal law imposing a tax against which credit may be taken  
13 for contributions required to be paid into a state unemployment  
14 fund;

15 (2) the amount of any payment with respect to  
16 services performed after June 30, 1941 to or on behalf of an  
17 individual in the employ of an employing unit under a plan or  
18 system established by the employing unit that makes provision  
19 for individuals in its employ generally or for a class or  
20 classes of individuals, including any amount paid by an  
21 employing unit for insurance or annuities, or into a fund, to  
22 provide for any payment, on account of:

23 (a) retirement if the payments are made  
24 by an employer to or on behalf of an employee under a  
25 simplified employee pension plan that provides for payments by

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1 an employer in addition to the salary or other remuneration  
2 normally payable to the employee or class of employees and does  
3 not include any payments that represent deferred compensation  
4 or other reduction of an employee's normal taxable wages or  
5 remuneration or any payments made to a third party on behalf of  
6 an employee as part of an agreement of deferred remuneration;

7 (b) sickness or accident disability if  
8 the payments are received under a workers' compensation or  
9 occupational disease disablement law;

10 (c) medical and hospitalization expenses  
11 in connection with sickness or accident disability; or

12 (d) death; provided that the individual  
13 in its employ has not the option to receive, instead of  
14 provision for the death benefit, any part of such payment, or,  
15 if such death benefit is insured, any part of the premiums or  
16 contributions to premiums paid by the individual's employing  
17 unit and has not the right under the provisions of the plan or  
18 system or policy of insurance providing for the death benefit  
19 to assign the benefit, or to receive a cash consideration in  
20 lieu of the benefit either upon the individual's withdrawal  
21 from the plan or system providing for the benefit or upon  
22 termination of the plan or system or policy of insurance or of  
23 the individual's service with the employing unit;

24 (3) remuneration for agricultural labor paid  
25 in any medium other than cash;

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1 (4) a payment made to, or on behalf of, an  
2 employee or an employee's beneficiary under a cafeteria plan  
3 within the meaning of Section 125 of the federal Internal  
4 Revenue Code of 1986;

5 (5) a payment made, or benefit furnished to or  
6 for the benefit of an employee if at the time of the payment or  
7 such furnishing it is reasonable to believe that the employee  
8 will be able to exclude the payment or benefit from income  
9 under Section 129 of the federal Internal Revenue Code of 1986;

10 (6) a payment made by an employer to a  
11 survivor or the estate of a former employee after the calendar  
12 year in which the employee died;

13 (7) a payment made to, or on behalf of, an  
14 employee or the employee's beneficiary under an arrangement to  
15 which Section 408(p) of the federal Internal Revenue Code of  
16 1986 applies, other than any elective contributions under  
17 Paragraph (2)(A)(i) of that section;

18 (8) a payment made to or for the benefit of an  
19 employee if at the time of the payment it is reasonable to  
20 believe that the employee will be able to exclude the payment  
21 from income under Section 106 of the federal Internal Revenue  
22 Code of 1986; or

23 (9) the value of any meals or lodging  
24 furnished by or on behalf of the employer if at the time the  
25 benefit is provided it is reasonable to believe that the

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1 employee will be able to exclude such items from income under  
2 Section 119 of the federal Internal Revenue Code of 1986."

3 Section 5. EFFECTIVE DATE.--The effective date of the  
4 provisions of this act is July 1, 2006.

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